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ENGLAND, DAVID E	
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/007,116
Filing Date: November 07, 2001
Appellant(s): BALLARD, CURTIS C.

Michael A. Papalas Reg. No. 40,381

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 02/23/2006 appealing from the Office action mailed 08/11/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

This appeal involves claims 2-12, 14-20 and 22.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The amendment after final rejection filed on 10/11/2005 has been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

A substantially correct copy of appealed claims 23 – 25 appears on page 14 of the Appendix to the appellant's brief. The minor errors are as follows: The claims status should read Withdrawn to reflect what is stated in the Appellant's Status Of Claims.

(8) Evidence Relied Upon

6,892,236	Conrad et al.	05-2005
6,738,813	Reichman	05-2004
5,642,237	Oskay et al.	06-1997
6,738,826	Moberg et al.	05-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "said second message instructs said

networked device manager to cause said networked device to use redundant hardware" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "said second message instructs said networked device manager to cause a reconfiguration of said networked device" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 2, 3, 5, 6 and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Conrad et al. U.S. Patent No. 6892236 (hereinafter Conrad).

As per claim 22, as closely interpreted by the Examiner, Conrad teaches a data collection and transmittal system, the system comprising:

a networked device, connected to a digital network, performing a dedicated stand-alone function, (e.g., col. 5, line 49 – col. 6, line 23);

data collection logic configured to collect information pertaining to said networked device's ability to perform said standalone function, (e.g., col. 5, line 49 – col. 6, line 23);

message generation logic configured to recognize a trigger event, associated with networked device's ability to perform said standalone function, and configured to generate an electronic message containing at least a portion of said collected information, (e.g., col. 5, line 49 – col. 6, line 23, *"report"*); and

a remote server configured to receive said electronic message over said digital networked and to determine an action to be taken with respect to said networked device, (e.g., col. 5, line 49 – col. 6, line 23).

Referencing claim 2, Conrad teaches said data collection logic is further configured to collect performance information from said networked device indicative of at least one performance criteria, wherein said performance information is included in said collected information, (e.g., col. 5, line 49 – col. 6, line 23).

Referencing claim 3, Conrad teaches said message generation logic is responsive to an elapsed time, (e.g., col. 6, line 61 – col. 7, line 24).

Referencing claim 5, Conrad teaches said digital network comprises the Internet, (e.g., col. 4, lines 39 – 51).

Referencing claim 6, Conrad teaches said collected information contains error information, (e.g., col. 11, lines 5 – 24).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 4, 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conrad as applied to claims 22 and 2 above, and in view of Reichman U.S. Patent No. 6738813.

Referencing claim 4, Conrad does not specifically teach said message generation is responsive to a message received from said remote server. Reichman teaches said message generation is responsive to a message received from said remote server, (e.g. col. 8, lines 44 – 55). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Reichman with Conrad because it would be more efficient for a system to update their records about specific devices in a network by requesting specific devices to transmit updated information about their activities.

Referencing claim 7, Conrad does not specifically teach a non-human networked device manager at least partially defined by software components, said networked device manager responsive to a second message which directs said networked device manager to perform a specific action. Reichman teaches a non-human networked device manager at least partially defined by software components, said networked device manager responsive to a second message which directs said networked device manager to perform a specific action, (e.g. col. 8, lines 26 – 43). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Reichman with Conrad because utilizing a network device manager could aid in the requesting of updated information about specific devices that could be in error and causing lack of performance in the network.

Referencing claim 10, Conrad does not specifically teach said second message instructs said networked device manager to cause a reconfiguration of said networked device. Reichman teaches said second message instructs said networked device manager to cause a reconfiguration of said networked device, (e.g. col. 6, lines 35 – 48). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Reichman with Conrad because if devices in the network are faulty and cause errors in the network which hinder the performance of the system reconfiguring a network device that is faulty could aid in the maintenance and performance of a system.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conrad and Reichman as applied to claims 22 and 7 above, and in view of Oskay et al. (5642337) (hereinafter Oskay).

As per claim 8, as closely interpreted by the Examiner, Conrad and Reichman do not specifically teach said networked device is jukebox. Oskay teaches said networked device is jukebox, (e.g. col. 3, lines 51 – 67). It would have been obvious to one of ordinary skill in the art at the time the invention was conceived to combine Oskay with the combine system of Conrad and Reichman because it is more efficient and common to use a jukebox storage device for large collections of files, such as data bases, image files and video files

As per claim 9, as closely interpreted by the Examiner, Conrad and Reichman do not specifically teach said second message instructs said networked device manager to cause said networked

device to use redundant hardware. Oskay teaches teach said second message instructs said networked device manager to cause said networked device to use redundant hardware, (e.g. col. 3, lines 32 – 50). It would have been obvious to one of ordinary skill in the art at the time the invention was conceived to combine Oskay with the combine system of Conrad and Reichman because it is more efficient for a system to utilize a type of backup service to ensure that if one system fails or has an error a backup or slave hardware device can take over.

Claims 11 and 16 – 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conrad and Reichman as applied to claims 1 and 12, and in view of Moberg et al. (6738826) (hereinafter Moberg).

As per claim 11, as closely interpreted by the Examiner, Conrad and Reichman do not specifically teach said second message instructs said networked device manager to replace a software module contained within said networked device with a replacement software module, (e.g. col. 1, line 61 – col. 2, line 3). It would have been obvious to one of ordinary skill in the art at the time the invention was conceived to combine Moberg with the combine system of Conrad and Reichman because it would be more efficient for a system to have the ability to upgrade the software in a device so the device can handle more information or to process information faster than previously done with the older software.

As per claim 16, Conrad does not teach said trigger event is the detection of an error condition. Reichman teaches said trigger event is the detection of an error condition, (e.g., col. 6, lines 18 –

34). It would have been obvious to one of ordinary skill in the art at the time the invention was conceived to combine Reichman with the combine system of Conrad and Moberg because it would be more efficient for a system to attempt to correct an error that is detected so a system as fewer error.

As per claim 17, Conrad does not specifically teach said trigger event is the receipt of a message. Reichman teaches said trigger event is the receipt of a message, (e.g. col. 8, lines 44 – 55). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Reichman with the combine system of Conrad and Moberg because of similar reasons stated in the rejection of claim 4 and others above.

Claims 18 and 19 are rejected for similar reasons stated above and more specifically in claims 4 and 7.

Claim 12, 14, 15 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conrad and Moberg.

As per claim 12, as closely interpreted by the Examiner, Conrad teaches a method of performance monitoring comprising the steps of:

collecting information from a networked device pertaining to an ability of said network device to perform a function, (e.g., col. 5, line 49 – col. 6, line 23);

receiving a trigger event related to said device's ability to perform said function, (e.g., col. 5, line 49 – col. 6, line 23);

organizing at least a portion of said collected information into a message, (e.g., col. 5, line 49 – col. 6, line 23);

transmitting said message to a server in response to receiving said trigger event, (e.g., col. 5, line 49 – col. 6, line 23); and

automatically analyzing said message, (e.g., col. 5, line 49 – col. 6, line 23), but does not specifically teach to determine an appropriate modification of said network device. Moberg teaches automatically analyzing said message to determine an appropriate modification of said network device, (e.g., col. 1, line 61 – col. 2, line 3). It would have been obvious to one of ordinary skill in the art at the time the invention was conceived to combine Moberg with Conrad because of similar reasons stated above.

As per claim 14, Conrad teaches said information contains error information, (e.g., col. 11, lines 5 – 24).

As per claim 15, Conrad teaches said trigger event is an elapsed time, (e.g., col. 6, line 61 – col. 7, line 24).

As per claim 20, Conrad teaches said message is transmitted over a digital packet network, (e.g., col. 6, line 61 – col. 7, line 24).

Response to Arguments

Applicant's arguments with respect to claims 2 – 12, 14 – 20 and 22 – 25 have been considered but are moot in view of the new ground(s) of rejection.

(10) Response to Argument

In the arguments, Appellant states that a review of Conrad fails to locate limitations required by claim 22. The ambiguity of the Examiner's rejection makes it impossible to determine which aspect of Conrad the Examiner believes matches the "networked device" recited in claim 22, but the working of the Examiner's rejection seems to imply that the Examiner intends to use either Conrad's "computer system components" or Conrad's "reporting clients." As clearly demonstrated in the Response to Final, neither the "computer system components" more the "reporting devices" described in Conrad meet the limitations claim 22 places on "network device[s]." For Example, if the Examiner intends the computer-system components to be considered a "networked device[s]" of claim 22, then the Examiner's rejection fails because computer-system components do not perform dedicated, stand-alone functions. If the Examiner intends Conrad's "reporting clients" be "networked device[s]," then the Examiner's rejection fails because Conrad cannot have "data collection logic configured to collect information pertaining to said networked device's ability to perform said standalone function," as no aspect of Conrad reports on the performance of the "reporting clients.

As to the first argument, as closely interpreted by the Examiner, with what is assumed to be embodied in the Appellant's invention, Conrad's "computer system components" or the "hosts" that are mentioned in column 6, line 30 of Conrad, perform functions that are reported to servers. Given the broadest interpretation and understanding of what is meant by the Appellant's claim language, it is assume that this contradiction of "stand-alone function" would eventually be connected to the network or is somehow collected by the system. In this case, it is very apparent that the prior art of Conrad teaches data collection logic which would be the reporting devices that collect trends across multiple reporting clients on a given set of hosts in the network. Also, the Appellant does not state in the claim language what the "function" could be, therefore the statistical data that is collected is in direct connection to a function that is repeatedly done by the hosts or computer system components in the network.

In the arguments, Appellant states that the combination of Conrad and Reichman does not teach or suggest all the limitations of the claims rejected. As demonstrated above, Conrad does not teach or suggest "a networked device, connected to a digital network, performing a dedicated stand-alone function" and "data collection logic configured to collect information pertaining to said networked device's ability to perform said standalone function." Further, the Appellant demonstrated, and the Examiner agreed, that the Appellant's First Response clearly demonstrated that Reichman did not teach or suggest these limitations either. Therefore, the combination of Conrad and Reichman does not teach or suggest all of the limitations of claims 4, 7 and 10 and the Examiner has failed to establish a prima facie case for rejecting these claims.

As to the second argument, Examiner would like to draw the Appellant's attention to the above rejections and response to their arguments. For they all hold the same weight in this argument and under the same logic, Conrad does teach the prior art as stated in claim 22. Therefore, under the same logic as the Appellant's, Conrad and Reichman teach all the limitations of the claims 4, 7 and 10 as rejected.

In the arguments, Appellant states that the Examiner has failed to provide any motivation for combining features of Conrad and Moberg for the purposes of rejecting claim 12. Instead, the Examiner merely refers to the motivation provided for claim 11. The Appellant respectfully asserts that this is inadequate as the features of claim 11 are different from those of claim 12, and that is omission alone is enough to demonstrate that the Examiner's rejection fails to establish a prima facie case. Appellant further goes on stating that Conrad and Moberg describe completely different systems, and one would need to substantially modify Conrad in order to perform any function from Moberg. Second, Appellant states that the feature the Examiner appears to want to add to Conrad is not actually performed by Moberg. Claim 12 recites "automatically analyzing said message to determine an appropriate modification of said network device." According to the Examiner, Conrad provides messages and analyzes them, and Moberg updates routers with replacement software. Neither Moberg nor Conrad, however, analyze messages to determine an appropriate modification. Without conceding that such a combination could meet the limitations of claim 12, in order to add the updating feature of Moberg to Conrad, as the Examiner appears to suggest, one must first find someway to determine what must be uploaded. Neither Conrad nor Moberg suggest how to do so.

As to the third argument, the prior arts of Conrad and Moberg are not so far apart in technologies that it would take substantial unspecified alterations to add the inventions together. Conrad teaches reporting types of statistical data to specific servers in a network, the statistical data is on components in the network. These components can be a wide range of different types of nodes, like routers disclosed in Moberg. If the statistical data is low or as described in Moberg, receiving a failover message at a currently active packet switching device, one can upgrade software on the router, which is at a low statistical value, to repair the errors being received by the reports. As can be seen there is no real substantial unspecified alteration needed for the two pieces of prior art to co-exist. Furthermore, Conrad is utilized to teach automatically analyzing said message while Moberg is be used to teach the overlapping parts of Conrad and automatically analyzing said message to determine an appropriate modification of said network device. As stated in Moberg, one would motivated to determine an appropriate modification of said network device, (upgrading software), and without halting network activity so to minimize the impact on the network operations, (e.g., Moberg, column 1, lines 30 – 40). Furthermore, Appellant does not state in the claim language what the "appropriate modification" is or could be and what the "device" could also be, only that analyzing is done "automatically" on a message to determine a modification. As is well known in the art that since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. *In re Venner,* 120 USPQ 192.

In the arguments, Appellant states that the as demonstrated above, Conrad does not teach or suggest "a networked device, connected to a digital network, performing a dedicated stand-alone function" and "data collection logic configured to collect information pertaining to said networked device's ability to perform said standalone function." Therefore, the combination of Conrad, Reichman and Oskay do not teach or suggest all of the limitations of claims 8 or 9, the combination of Conrad, Reichman and Moberg do not teach the limitations of claim 11, and the Examiner has failed to establish a prima facie case for rejecting these claims.

As to the forth argument, Examiner would like to draw the Appellant's attention to the above replies to their arguments. In which, one can see that Conrad does teach the limitations of claim 22 and therefore also teaches all of the limitations of claims 8, 9 and 11.

In the arguments, Appellant states that the combination of Conrad and Moberg lack motivation with respect to the features of claim 12, and also fail to teach or suggest all the features the Final Action appears to want to combine. Although not relied on to do so in the Final Action, the Appellant respectfully asserts that Reichman neither provides the missing motivation nor provides the missing limitations. Therefore, the Examiner's combination of Conrad, Reichman, and Moberg has failed to establish a prima facie case.

As to the fifth argument, Examiner would like to draw the Appellant's attention to the above replies to their arguments. In which, one can see that the combination of Conrad and Moberg can be combined to teach the prior art and the motivation as stated by the Examiner as disclosed in

claim 12. Therefore, the Examiner's combination of Conrad, Reichman, and Moberg has establish a prima facie case.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

DE DL

Conferees:

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(11) Related Proceeding(s) Appendix

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